BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JOE R. VILLARREAL	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 1,027,517
BEAR PETROLEUM and	)	& 1,027,518
PLAINS, LLC	)	
Respondents	)	
AND	)	
	)	
TRAVELERS INDEMNITY COMPANY and	)	
WESTPORT INSURANCE COMPANY	)	
Insurance Carriers	)	

ORDER

Respondent Plains, LLC (hereafter respondent), and its insurance carrier, Westport Insurance Company, appeal the April 6, 2006 preliminary hearing Order of Administrative Law Judge John D. Clark. Claimant was awarded benefits in the form of medical treatment and temporary total disability after the Administrative Law Judge (ALJ) determined that claimant's injury arose out of and in the course of his employment with respondent.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the ALJ should be affirmed.

Claimant was hired as a floor hand for respondent, doing maintenance and repair on existing pumping units in the oil and gas fields. Respondent and a company called Gressel Oil Field Services (hereinafter Gressel) were contracted with another company called Bear Petroleum (hereinafter Bear). Respondent's employees serviced oil wells under contract with Bear. Gressel is a well servicing company under contract with Bear, an oil field exploration company. Claimant worked with Philip Hernandez (claimant's

immediate supervisor) and Terry Hernandez (claimant's co-worker). In the week leading up to the accident, claimant, Philip Hernandez and Terry Hernandez were staying in a motel in Winfield, Kansas. Normally, claimant would ride to the well sites with Philip Hernandez and Terry Hernandez in a company truck. However, on Monday, December 19, 2005, claimant drove his own vehicle to a well site in Haysville, Kansas, after he went to a doctor's appointment. Claimant's vehicle stayed at that site until the date of the alleged accident on December 22, 2005.

On December 22, 2005, claimant rode to the well sites with Philip Hernandez and Terry Hernandez. Even though Philip Hernandez was identified as the foreman for respondent, they were supervised at the well sites by a Gressel roustabout, named Joe Burnett. Mr. Burnett would tell the workers when to start, when to stop, and where to work.

On the date of accident, after the work at the well sites was completed, Mr. Burnett told the workers to clean up, which they did. Philip Hernandez and Terry Hernandez were then instructed to go to the motel in the company vehicle. Claimant was instructed to go with Mr. Burnett to get claimant's personal vehicle. The trip to Haysville was on the same route as Mr. Burnett's company travels to Wellington, Kansas, where Burnett was going to drop off a bulldozer. Claimant rode in a Gressel vehicle with Mr. Burnett, and a Gressel worker identified as Randy Chappell drove a semi-trailer truck with the bulldozer. When they arrived at the well site at Wellington, Mr. Burnett and Mr. Chappell unloaded the bulldozer. Mr. Burnett then drove across the road to a well site to obtain a sample. Upon arriving at the well, he noticed the pump was hitting bottom. This would cause damage to the pump if not corrected.

Claimant testified that Mr. Burnett requested his assistance. Claimant and Mr. Chappell then went to the well with Mr. Burnett and began working on the pump. Claimant was told to start loosening the clamp on the pumping unit.[1] The footing around the pump was slick. As claimant worked to loosen the clamp, his foot slipped and he grabbed the polish rod to keep from falling. The clamp then caught his left hand, crushing his thumb and index finger. As Mr. Chappell and Mr. Burnett worked to get claimant loose, the pump raised claimant 15 to 20 feet off the ground. When claimant was returned to the ground, the clamp released him. Claimant was then transported to the hospital in Wellington and later underwent surgery to repair the damage.

Respondent alleges the accident did not arise out of or in the course of claimant's employment, as claimant was finished with his work for the day. The well where the accident occurred was not one over which respondent had any responsibility. There was no contract between respondent and Bear for that site, although respondent had serviced that site for Bear in the past. Respondent argues that claimant was acting as a volunteer

[1] P.H. Trans. at 25.

on the date of accident at the Wellington site and should be denied workers compensation benefits.

Claimant argues that Mr. Burnett, as his supervisor, had requested his assistance at that site. Therefore, the injury arose out of and in the course of his employment.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.[2]

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[3]

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.[4]

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, et seq.,

> . . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."[5]

Respondent argues that claimant should be denied benefits because at the time of the accident, he was on a personal errand, i.e., to pick up his car.

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[2] K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

[3] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

[4] K.S.A. 2005 Supp. 44-501(a).

[5] *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

K.S.A. 2005 Supp. 44-508(f) limits injuries arising out of and in the course of employment to not include,

> . . . injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence.

Here, claimant was required to travel from well to well to perform his normal work duties for respondent. A situation strikingly similar to this case is *Messenger.*[6] In *Messenger*, the claimant was killed while traveling home from a distant drill site. The Kansas Court of Appeals noted in *Messenger* that:

> Kansas has long recognized one very basic exception to the "going and coming" rule. That exception applies when the operation of a motor vehicle on the public roadways is an integral part of the employment or is inherent in the nature of the employment or is necessary to the employment, so that in his travels the employee was furthering the interests of his employer.[7]

Here, claimant was normally furnished transportation to and from the well sites. The only reason claimant drove his car to the well site in Haysville was because of his doctor's appointment. All other transportation after that time was furnished by respondent. The ride to claimant's vehicle, while in a Gressel truck, was provided by claimant's supervisor, Mr. Burnett, and furnished at the instruction of that supervisor. This allowed Philip Hernandez and Terry Hernandez to proceed to the motel, and allowed claimant to obtain his personal vehicle with the least amount of inconvenience to all involved. This would appear to further the interests of both claimant and respondent.

Respondent further argues that claimant's injuries happened while claimant was "off the clock", and at a location over which respondent had no contractual liability. While it is true that claimant had clocked out, he was still in transit to his personal vehicle, in a vehicle operated by his supervisor. The logic of *Messenger* would indicate that claimant was still acting in the course of his employment. The facts in *Messenger* support this claim even more when one considers the fact that the claimant in *Messenger* furnished his own transportation, and the claimant here normally did not.

Respondent further argues the injuries did not arise out of claimant's employment, as the accident occurred at a well site over which respondent had no responsibility. However, claimant testified that Mr. Burnett requested his assistance when the problem suddenly arose. Mr. Burnett testified, that, while he did not remember ordering claimant

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[6] *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984).

[7] *Id.* at 437.

to help, in the oil fields, it was customary "to help".[8] This, coupled with claimant's testimony that Mr. Burnett requested his assistance, a request from his immediate supervisor, convinces the Board that claimant's actions that day were "in the course of" his employment. Claimant's actions certainly furthered the interest of his employer in helping employees of a company, with which respondent had an ongoing contractual relationship, to repair a well owned by another company, with which respondent likewise had an ongoing contractual relationship.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated April 6, 2006, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 2006.

BOARD MEMBER

c: Kelly W. Johnston, Attorney for Claimant
William L. Townsley, III, Attorney for Respondent Bear Petroleum and its Insurance Carrier Travelers Indemnity Company
Matthew J. Schaefer, Attorney for Respondent Plains, LLC, and its Insurance Carrier Westport Insurance Company
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[8] P.H. Trans. at 63.